



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R02-OAR-2016-0414, FRL-9982-80-Region 2]

Approval of Air Quality Implementation Plans; New York; Fuel Composition and Use - Sulfur Limitations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a revision to the New York State Implementation Plan (SIP) concerning sulfur-in-fuel limits. The intended effect of this revision is to add a regulatory mechanism for meeting the existing obligations related to regional haze. The SIP revision consists of amendments to Title 6 of the New York Codes, Rules and Regulations and also removes obsolete provisions from the Code of Federal Regulations (CFR) relating to New York's sulfur-in-fuel regulation.

DATES: This final rule is effective on [insert date 30 days after date of publication in the Federal Register].

ADDRESSES: The EPA has established a docket for this action under Docket ID Number EPA-R02-OAR-2016-0414. All documents in the docket are listed on the <https://www.regulations.gov> web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through <https://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

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I. Background

The EPA is approving New York's State Implementation Plan (SIP) submittal consisting of revisions to Title 6 of the New York Codes, Rules and Regulations (6 NYCRR) Section 200.1, "Definitions," which adds a definition for waste oil. EPA is approving, with limitations, Subpart 225-1, "Fuel Composition and Use - Sulfur Limitations," as contributing to attainment of the National Ambient Air Quality Standards (NAAQS) for particulate matter less than or equal to 2.5 microns in diameter (PM 2.5) and the NAAQS for sulfur dioxide (SO₂), and establishing a revised regulatory mechanism for New York's regional haze SIP. The EPA's approval of New York's sulfur-in-fuel regulation into the SIP does not alter the EPA's prior action on New York's Regional Haze SIP, which includes emission reductions related to the sulfur-in-fuel requirements of section 19-0325 of the Environmental Conservation Law (ECL). 77 FR 51915 (August 28, 2012). The EPA is approving these revisions, requested by New York, as strengthening the effectiveness of New York's SIP.

Pursuant to 40 CFR part 51, the EPA also is removing a section from 40 CFR 52.1675 which lists sulfur limitations for various facilities in New York. EPA has determined that these limitations have expired

and/or refer to sources which have been shut down. That determination was reflected in EPA's reformatting exercise that ensured that all revisions to the New York State SIPs are accurately reflected in 40 CFR part 52, including 40 CFR 52.1670(d), "EPA approved State source-specific requirements." 76 FR 41705 (July 15, 2011). In addition, the sulfur-in-fuel rule proposed for approval here requires the use of lower sulfur fuel, with lower sulfur concentrations than the limits listed in 40 CFR 52.1675. The EPA is therefore removing the existing sulfur limitations in 40 CFR 52.1675 as they are superfluous and obsolete. The EPA is also revising 40 CFR 52.1675(e) to conform with the new nomenclature in New York's revised Subpart 225-1 that is being approved with this action.

II. EPA's Evaluation of New York's Submittal

On June 12, 2013, New York State Department of Environmental Conservation (NYSDEC) submitted to the EPA the proposed revisions to Section 200.1 and Subpart 225-1 and supplemental materials, including documentation of the comment period and public hearings, and NYSDEC's responses to public comments. These materials are in the EPA's docket for this proposal. On June 26, 2018 (83 FR 29723) EPA proposed approval of New York's SIP revision consisting of amendments to Title 6 of the New York Codes, Rules and Regulations Subpart 225-1, "Fuel Composition and Use - Sulfur Limitations" and Section 200.1, "Definitions." EPA also proposed to remove an obsolete provision from the Code of Federal Regulations (CFR) related to facility specific sulfur-in-fuel limits. A detailed discussion of the revised sulfur-in-fuel limits, exceptions, and variances and EPA's evaluation of the revisions to Subpart 225-1 and to the CFR can be found in the June 26, 2018 proposal and will not be restated here.

III. Comments Received in Response to EPA's Proposed Action

In response to EPA's June 26, 2018 proposed approval of the revisions to Section 200.1, Subpart 225-1 and the CFR, EPA received one comment from the public during the 30-day public comment period.

After reviewing the comment, EPA has determined that the comment is outside the scope of our proposed action or fails to identify any material issue necessitating a response. The comment does not raise issues germane to the EPA's proposed action. For this reason, the EPA will not provide a specific response to the comment. The comment may be viewed under Docket ID Number EPA-R02-OAR-2016-0414 on the <http://www.regulations.gov> website.

IV. Summary of EPA's Final Action

The EPA is approving the revisions to New York's Title 6 of the New York Codes, Rules and Regulations Section 200.1, "Definitions," and Subpart 225-1, "Fuel Composition and Use - Sulfur Limitations," both effective on April 5, 2013, into New York's SIP as strengthening enforcement of the State's air pollution control regulations. Exceptions or variances adopted by New York pursuant to the provisions of sections 225.1.3 and 225.1.4(b) are federally enforceable only if approved by the EPA as SIP revisions.

In addition, EPA has determined that the provisions in New York's SIP at 40 CFR 52.1675(d), (f) and (g) have either expired or the affected sources have shut down and that the 52.1675 requirements are therefore superfluous and obsolete. The EPA is removing the provisions of 52.1675(d), (f) and (g) from the SIP. The EPA is also revising 40 CFR 52.1675(e) to conform with the new nomenclature in New York's revised Subpart 225-1 that is being approved with this action.

V. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the provisions described above in Section IV of this action. EPA has made, and will continue to make, these materials generally available through <https://www.regulations.gov> and at the EPA Region 2 Office (please contact

the person identified in the “For Further Information Contact” section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the State Implementation Plan, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the Clean Air Act as of the effective date of the final rulemaking of EPA’s approval, and will be incorporated by reference in the next update to the SIP compilation.¹

VI. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA’s role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

¹ 62 FR 27968 (May 22, 1997).

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this

action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: August 8, 2018. Peter D. Lopez,
Regional Administrator,
Region 2.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart HH – New York

2. In § 52.1670, the table in paragraph (c) is amended by revising two entries entitled “Title 6, Part 200, Subpart 200.1” and “Title 6, Part 225, Subpart 225-1” to read as follows:

§ 52.1670 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED NEW YORK STATE REGULATIONS AND LAWS

| State citation | Title/subject | State effective date | EPA approval date | Comments |
|----------------------------------|---------------------------------|-----------------------------|--|--|
| Title 6, Part 200, Subpart 200.1 | General Provisions, Definitions | 4/5/2013 | [Insert date of publication in the Federal Register] | <p>The word odor is removed from the Subpart 200.1(d) definition of “air contaminant or air pollutant.”</p> <p>Redesignation of non-attainment areas to attainment areas (200.1(av)) does not relieve a source from compliance with previously applicable requirements as per letter of Nov. 13, 1981 from H. Hovey, NYSDEC.</p> <p>Changes in definitions are acceptable to EPA unless a previously approved definition is necessary for implementation of an existing SIP regulation.</p> <p>EPA is including the definition of “federally enforceable” with the understanding that (1) the definition applies to provisions of a Title V permit that are correctly identified as federally enforceable, and (2) a source accepts operating limits and conditions to lower its potential to emit to become a minor source, not to “avoid” applicable requirements.</p> <p>EPA is approving incorporation</p> |

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|----------------------------------|---|----------|---|---|
| | | | | by reference of those documents that are not already federally enforceable. EPA approval finalized at [Insert Federal Register citation] . |
| ***** | | | | |
| Title 6, Part 225, Subpart 225-1 | Fuel Composition and Use-Sulfur Limitations | 4/5/2013 | [Insert date of publication in the Federal Register] | <ul style="list-style-type: none"> • Exceptions or Variances adopted by the State pursuant to §§225.1.3 and 1.4(b) become applicable only if approved by EPA as SIP revisions (40 CFR 52.1675(e)). • EPA approval finalized at [Insert Federal Register citation]. |
| ***** | | | | |

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3. Amend § 52.1675 by:

- a. Removing and reserving paragraph (d);
- b. Revising paragraph (e); and
- c. Removing paragraphs (f) and (g).

The revisions read as follows:

§ 52.1675 Control strategy and regulations: Sulfur oxides.

* * * * *

(d) [Reserved]

(e) Any exception or variance promulgated by the Commissioner under 6 NYCRR Sections 225-1.3 and 1.4(b) shall not exempt any person from the requirements otherwise imposed by 6 NYCRR Subpart 225-1; provided that the Administrator may approve such exception or variance as a plan revision when the provisions of this part, section 110 (a)(3)(A) of the Act, and 40 CFR part 51 (relating to approval of and revisions to State implementation plans) have been satisfied with respect to such exception or variance.

[FR Doc. 2018-18115 Filed: 8/22/2018 8:45 am; Publication Date: 8/23/2018]